BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF EP ENERGY E&P COMPANY, L.P. FOR AN ORDER POOLING ALL INTEREST, INCLUDING THE COMPULSORY POOLING OF THE INTERESTS OF ARGO ENERGY PARTNERS, LTD., DUSTY SANDERSON, HUNT OIL COMPANY, KKREP, LLC, AND J.P. FURLONG CO., IN THE DRILLING UNIT ESTABLISHED FOR THE PRODUCTION OF OIL, GAS AND ASSOCIATED HYDROCARBONS FROM THE LOWER GREEN RIVER-WASATCH FORMATIONS COMPRISED OF ALL OF SECTION 2, TOWNSHIP 3 SOUTH, RANGE 5 WEST, U.S.M., DUCHESNE COUNTY, UTAH	**RESPONSE TO PETITION FOR RECONSIDERATION OF AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** Docket No. 2015-013 Cause No. 139-130 EXPEDITED RULING REQUESTED

COMES NOW, J.P. Furlong Co., ("Respondent") acting by and through its attorney, Anthony T. Hunter, pursuant to Utah Admin. Code Rule R641-110-300, in response to the Petition for Reconsideration of Amended Findings of Fact, Conclusions of Law and Order (the "Reconsideration Request") of EP Energy E&P Company, L.P. ("Petitioner") and states:

INTRODUCTION

This is Petitioner's second attempt to retread arguments made and lost at the hearing on April 22, 2015 and another attempt to create controversy where there shouldn't be any. Despite substantially prevailing on the original Request for Agency Action (the "RAA), Petitioner simply will not accept Respondent's status as a consenting owner in the Neihart Well. Respondent suggests that a reconsideration is not necessary in this case and Petitioner's request should be denied for the reasons set forth below.

I. The controlling statute disposes of Petitioner's argument.

Utah Code Ann. 40-6-6.5 (4)(c) states:

> Each pooling order shall provide that each consenting owner shall own and be entitled to receive, subject to royalty or similar obligations:
>
> (i) the share of the production of the well applicable to the consenting owner's interest in the drilling unit; and
>
> (ii) unless the consenting owner has agreed otherwise, the consenting owner's proportionate part of the nonconsenting owner's share of the production until costs are recovered…

As part of its final order in this case, the Board granted Petitioner's request to adopt the proposed JOA in full, over Respondent's objections. All parties are painfully aware that Respondent never agreed to the JOA (*see* Reconsideration Request, Section II Heading, "…adopted by the Board and imposed upon Furlong…"). Without Respondent's agreement, the statute mandates the division of interests exactly as the Board ordered. Apparently recognizing inherent inconsistency of rebranding an imposed order as an agreement, Petitioner then cites the AFE as the actual " "agreement" " (Rehearing Request, Page 4, *quotes in original*) which overrides the statute. The AFE is completely silent on the topic of third party non-consents.

Petitioner attempts to use this silence as justification to change the meaning of the explicit terms of the AFE. Even assuming *arguendo* that a third-party non-consent clause is a necessary term in an AFE,[1] this is exactly the opposite of how contract law works. Rather than change the meaning of agreed terms, in the absence of the explicit agreement of the parties, courts (and administrative bodies like the Board) will look to extrinsic evidence to supply additional needed terms.[2] It's hard to find higher quality extrinsic

[1] And it's hard to see how that is possible, as presumably no one has had a chance to refuse to authorize expenditures yet at the stage of operations when AFE's are typically executed. Typically.

[2] "When the parties to a bargain sufficiently defined to be a contract have not agreed with respect to a term which is essential to a determination of their rights and duties, a term which is reasonable in the

evidence of what that additional term should be than the statute supplied by the Legislature. The JOA was imposed, not agreed. The AFE was silent, not ambiguous. Therefore, the statute controls. The Board properly rejected Petitioner's proposed language.

II. The persuasiveness of Respondent's argument is not a proper subject for a rehearing.

The Board's Rules govern the proper reasons for requesting reconsideration.[3] Petitioner's argument fails to meet any of those requirements. While Petitioner might believe the Board's decision is unfavorable to his client, it has failed to show how the Board arrived at its decision in an untoward or unjustified manner. A generous portion of its filing was spent on the timing of each stage of operations, and when which parties were aware of what activity, and how that activity was discovered.[4] This cavalcade of complicated considerations merely underscores Respondent's central thesis of the case. Namely, it is fool's errand to attempt to equitably apply a non-consent penalty to *any* party who is not offered a chance to participate prior to a well being spud. *Petitioner never offered Respondent the chance to bear its share of the risk before Petitioner took that risk on by itself.* Petitioner admits that the Board "was persuaded"[5] and "felt justified"[6] in its deliberations and decisions, which necessarily implies that sufficient facts on the record exist to support them. The Petitioner failed to carry its burden of persuasion with this tribunal on these issues.

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circumstances is supplied by the court." Restatement (Second) of Contracts§ 204 (1981). *Alpha Partners, Inc. v. Transamerica Inv. Management, L.L.C.*, 153 P.3d 714, 2006 UT App 331 (Utah App. 2006) at ¶ 24.

[3] The decision must be "unlawful, unreasonable, or unfair." Utah Admin. Code R641-110-200.

[4] Tab 3 of Petitioner's Annexed Abstract shows that it represented to Hunt Oil (and later, to Respondent), that the well had been spud. While technically true, the well had also been drilled to depth, completed, and been producing for two months.

[5] Reconsideration Request, Page 8.

[6] Reconsideration Request, Page 7.

On the specific allegation that Mr. Furlong knew or should have known that the well was "drilled" and must be corrected, Respondent replies that "spud" and "drilled" and "completed" are not the same thing. The Board's Finding of Fact #13 is an accurate summary of the evidence submitted to it.[7] And on the specific allegation that the Board must impose the proportionate share of the cost of this hearing upon Respondent, Respondent replies that in the American justice system, parties typically pay their own attorney's fees in the absence of a statute or contract.[8] Additionally, routine regulatory expenses are typically borne by the Operator as overhead. However, in this particular case, because the bulk of the work was done *defending* Petitioner's ultimately unjustified behavior and legal stance (as applied to Respondent), such an order would constitute a gross miscarriage of justice, and a waste of the Board's time (and all parties' legal budgets) as we argue over what percentage of the bill was specifically devoted to the compulsory pooling of Argo and Sanderson.[9]

WHEREFORE, Respondent respectfully requests that the Board:

1. DENY, without consideration of the merits, the Reconsideration Request; or in the alternative
2. DENY Petitioner's Reconsideration Request on the merits, as failing to meet Board standards for the contents of a qualified petition for rehearing under Utah Admin. Code Rule R641-110-200.

[7] *See* Footnote 4.
[8] Typically an agreed one, not an imposed one.
[9] As opposed to justifying a CA for the Tribe, satisfying outstanding Division Order Title Opinion requirements, properly documenting division orders, etc…

Respectfully Submitted this 6th day of August, 2015.

By: _____

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CERTIFICATE OF MAILING

I certify that I caused a true and correct copy of the foregoing document to be mailed via U.S. Postal Service and via electronic mail to the below named parties.

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Signed, this 6th day of August, 2015.